

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE**

WRIT PETITION NO.10883 OF 2004

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders.

Court's or Judge's orders

Mr.J.Reis with Mr. Yadunath Chaudhari, for
the Petitioner

Mr. Nihar Ghag with Ms. Monika Parikh for
Respondent Nos. 1 and 2.

Mr. R.G. Bhatt, for Respondent NO.3.

**CORAM : F.I. REBELLO,J.
DATED : JANUARY 24, 2005**

P.C.

. Petitioner has raised an objection to the maintainability of the suit on the ground that it is the petitioner who is in possession and, therefore, the suit simplicitor for injunction would not be maintainable. Once the suit is for injunction and relief of possession has to be sought for then in that event the City Civil Court will have no pecuniary jurisdiction to hear and decide the suit.

2. In the instant case the plaintiffs have come to the Court on the basis that they are in exclusive and lawful possession. It is for the Plaintiffs-Respondents Nos. 1 and 2 to establish their possession. If the Court

comes to the conclusion that the respondents are not in lawful possession the relief as prayed for cannot be granted. Then it will be essential to apply for recovery of possession. To my mind considering framing of Issue No.1 the onus is on the plaintiffs, Respondent Nos. 1 and 2 to establish their possession. The mere fact that non-framing of an additional issue as sought to be raised on behalf of the petitioner cannot be said to be an error of law which will warrant this Court interfering in the exercise of its extraordinary jurisdiction. Considering the above no interference called for. Petition rejected. No order as to costs.

. Personal Secretary of this Court
to issue authenticated copy of this order
to the parties.

(F.I. REBELLO, J.)